

STUDY GROUP ON RECALLED JUDGES

HON. John C. Eldridge
CHAIR
Hon. Theodore G. Bloom
Hon. Richard R. Bloxom
Hon. Arrie W. Davis
Hon. Barbara Kerr Howe
Hon. Thurman H. Rhodes
Hon. Richard T. Rombro
Hon. I. Marshall Seidler
Hon. Mary Ann Stepler
Hon. Paul H. Weinstein

MURPHY COURTS OF APPEAL BUILDING
361 ROWE BOULEVARD
ANNAPOLIS, MARYLAND 21401
410-260-1400 MD RELAY SERVICE (TT/VOICE) 800-735-2258

ELIZABETH BUCKLER VERONIS, ESQ.
STAFF
410-260-1408 or elizabeth.veronis@courts.state.md.us

November 2, 2006

The Honorable Robert M. Bell
Chief Judge,
The Honorable Irma S. Raker
The Honorable Alan M. Wilner
The Honorable Dale R. Cathell
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
Judges,
The Court of Appeals of Maryland
Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401-1699

RE: Recalled Judges

Your Honors:

The Study Group on Recalled Judges has met several times since its Interim Report was submitted to the Court on December 1, 2005. In light of the Court's planned open meeting on the Interim Report, the Study Group would like to take this opportunity to provide additional information on several of the recommendations contained in the Interim Report.

In an effort to obtain more information from other states about their use of recalled judges, staff for the Study Group contacted 15 state court administrators by telephone. Of the 15 states contacted, representatives from 11 responded in full or in part to staff's questions. The results of the inquiries are as follows.

Recommendation No. 1: *Recalled judges who are willing to work as a judge at least 50% of the 246 days to be used for computation of a per diem under Code, Courts and Judicial Proceedings Article § 1-302 shall be subject to all provisions of the Maryland Code of Judicial Conduct and the financial disclosure requirement.*

Staff asked state court administrators or their representatives whether their respective state allows recalled judges to engage in private alternative dispute resolution (ADR) activities for which the parties pay a fee. Of the states responding, six states permit recalled judges to engage in ADR (Arkansas, Colorado, Delaware, Georgia, Louisiana, Virginia). Three states prohibit ADR (Indiana, Kentucky, New Jersey). One state permits only volunteer ADR (California). The representative from Colorado stated that recalled judges are permitted to join the Judicial Arbiter Group and/or the state's "rent a judge" (party paid) program. If service in either of these programs create a conflict for the recalled judge, the judge would be required to resign from either the ADR program or the recalled judge program.

The Study Group notes that consideration should be given to extant contracts that may exist at the time of any rule change.

Based on the responses to the survey conducted by the Study Group when it initiated its work, a chart will show the recalled judges by county in which authorized to sit, the number of days sitting as self-reported on the survey and to the Administrative Office of the Courts, and the conduct of private ADR.

Recommendation No. 2: *A per diem should be paid for each day that a recalled judge works, without being predicated on an 8-hour workday, and shall be counted toward the maximum based on date payment is earned.*

Staff inquired about compensation structure and expense reimbursement for recalled judges. All states who responded indicated either *per diem* payment or enhancement to a retirement benefit. Most states pay recalled judges for time spent in court and working on a case, including research and drafting opinions. One state pays recalled judges only for court time (Virginia). Two states pay for travel time (Arkansas and Colorado). Colorado pays recalled judges for participation in special projects, special programs (including ADR), and committee work. California pays for recalled judges' mandatory continuing judicial education. In Louisiana, if a recalled judge worked 40 days in the prior calendar year and promises to continue working, the judge is reimbursed for up to \$1,500 for continuing judicial education. Three states stated that they reimburse judges for expenses arising from attendance at the state's judicial conference (Colorado, Florida, Indiana). Indiana invites recalled judges to numerous seminars each year. The Indiana Judicial Center pays the

The Honorable, The Court of Appeals
November 2, 2006
Page 3 of 3

expenses, registration fees and continuing judicial education costs of recalled judges who attend these seminars. The representative from Indiana noted that serving as a court-ordered mediator counts as judicial service and a recalled judge may be paid a *per diem* for that service.

No state contacted uses an hourly rate basis for payment.

Recommendation No. 4: *A recalled judge shall be deemed an employee and not an independent contractor.*

Staff asked state court representatives whether they pay recalled judges as employees or independent contractors. Eight states responded that they pay recalled judges as employees (Arkansas, Colorado, California, Florida, Georgia, Indiana, Kentucky, Virginia). Two states treat recalled judges as independent contractors (Louisiana, New Jersey). The court representative from Kentucky noted that on very rare occasions when retired judges who are not in the state's Senior Judge Program are recalled, those judges are paid as independent contractors. None of the states was able to elucidate the reason(s) for which its particular practice was established.

The Study Group will proceed with its consideration of other aspects of recall to judicial service and will submit a final report addressing those issues.

Very truly yours,

John C. Eldridge
Chair

cc: Study Group on Recalled Judges
Elizabeth Buckler Veronis, Esq.
C. Shea McSpaden, Esq.